

National Tribal Operations Committee (NTOC)



Agenda • October 11, 2017

EPA Rachel Carson Green Room
1200 Pennsylvania Ave. NW, Washington, D.C.

- 9:00 – 9:45 am** **Welcome and Invocation**
- Invocation and Introductions
 - Opening remarks from E. Scott Pruitt, EPA Administrator and NTOC Co-Chair
 - Opening remarks from Evaristo Cruz, NTC Chair and NTOC Co-Chair
- 9:45 – 10:00 am** **Reaffirmation of the EPA Policy for the Administration of Environmental Programs on Indian Reservations**
- NTOC Co-Chairs: E. Scott Pruitt, Administrator, EPA; and Evaristo Cruz, National Tribal Caucus Chair
- 10:00 – 11:00 am** **I. Launching a New Era of Tribal, State and Local Partnerships**
- Goal of Session: Define what cooperative federalism means for EPA, tribal governments and states, and partnership opportunities available as co-regulators under the 1984 Indian Policy.*
- Remarks from Ken Wagner, EPA Senior Advisor to the Administrator for Regional and State Affairs
 - Remarks from Evaristo Cruz, NTC Chair and NTOC Co-Chair
 - Remarks from Alexandra Dapolito Dunn, ECOS Executive Director
 - Discussion with EPA, NTC and ECOS
- 11:00 – 12:15 pm** **II. Streamlining Environmental Management**
- Goal of Session: Share information on EPA's role in protecting human health and the environment through implementation of cooperative federalism models. Topics will include ETEPs and TAS.*
- Jane Nishida, Acting Assistant Administrator for the Office of International and Tribal Affairs
 - Deborah Szaro, Region 1 Acting Regional Administrator
 - Paula Britton, NTC Vice Chair



- Discussion with EPA and NTC

12:15 – 12:45 pm Working Lunch

- Box lunches will be provided for all NTOC participants for a fee

12:45 – 1:25 pm Implementing Key Administration Priorities: Superfund

Goal of Session: Discuss recommendations that will streamline and improve the Superfund program and how the renewed focus will affect tribal communities.

- Albert “Kell” Kelly, Senior Advisor to the Administrator for Superfund
- Gerald Wagner, NTC Secretary
- Discussion with EPA and NTC

1:25 – 1:45 pm Long-Term Planning

Goal of Session: NTC to communicate FY 2019 budget and priorities for long-term planning. Align most essential focus areas outlined within the strategic plan.

- Budget and Priorities for Tribal Governments, Evaristo Cruz, NTC Chair and NTOC Co-Chair
- Discussion with EPA and NTC

1:45 – 2:00 pm Wrap-Up

- Summarize Action Items and Next Steps
- Closing Remarks

NTC and EPA Program Leadership Meetings



AGENDA • Thursday, October 12, 2017

William Jefferson Clinton Building (South) 6045 (NETI Room)
Washington, D.C.

Conference Call: (b) (6); code (b) (6)

Time	Discussion Topic
8:00 am – 8:15 am	Opening Remarks and Invocation
8:15 am – 9:45 am	Discussion with Office of Air and Radiation
9:45 am – 10:00 am	Break
10:00 am – 11:30 am	Discussion with the Office of Chemical Safety and Pollution Prevention
11:30 am – 1:00 pm	Discussion with Office of Land and Emergency Management
1:00 pm – 2:30 pm	Lunch
2:30 pm – 4:00 pm	Discussion with Office of Water
4:00 pm – 4:30 pm	Wrap up



National Tribal Caucus



Evaristo Cruz

NTC Chair, Region 6

Ysleta del Sur Pueblo of Texas

Director of Environmental Management



Paula Britton

NTC Vice Chair, Region 9

Cahto Tribe

Tribal Administrator



Gerald Wagner

NTC Secretary, Region 8

Blackfeet Tribe

Environmental Programs Director



Sharri Venno

Region 1

Houlton Band of Maliseet Indians

Environmental Planner



Matthew V. Thompson

Region 2

Saint Regis Mohawk Tribe

Environmental Resources Coordinator



National Tribal Operations Committee



Darin Steen
Region 4
Catawba Indian Nation
Environmental Services Director



Levi Brown
Region 5
Leech Lake Band of Ojibwe
Environmental Program Director



Sara Hill
Region 6
Cherokee Nation
Secretary of Natural Resources



Julia Sage
Region 7
Ponca Tribe of Nebraska
Environmental Manager



Scott Clow
Region 8
Ute Mountain Tribe
Environmental Programs Director



National Tribal Operations Committee



Mark Allen

Region 8

Flandreau Santee Sioux Tribe
GAP/GIS Coordinator



Alex Cabillo

Region 9

Hualapai Tribe
Water Resources Director



Clifford Banuelos

Region 9

Elko Band of the Te-Moak Tribe of Western
Shoshone
Environmental Coordinator



Willie Frank, III

Region 10

Nisqually Tribe
Tribal Council Member



Lee Juan Tyler

Region 10

Shoshone Bannock Tribes
Tribal Council Member



National Tribal Operations Committee



Billy Maines

Alaska Region 10

Curyung Tribe
Tribal Council Member &
Environmental Coordinator



Thomas Robinson

Alaska Region 10

Qawalangin Tribe of Unalaska
Tribal President



EPA Attendees

2017 National Tribal Operations Committee Meeting

Administrator's Office

Scott Pruitt, *EPA Administrator*
 Mike Flynn, *EPA Acting Deputy Administrator*
 Sarah Greenwalt, *Senior Advisor to the Administrator*
 Kenneth Wagner, *Senior Advisor to the Administrator*
 Albert "Kell" Kelly, *Senior Advisor to the Administrator*
 Nick Falvo

Region 1

Deb Szaro, *Acting Regional Administrator*
 Mike Stover

Region 2

Pat Evangelista, *Director, Office of Strategic Programs*
 Grant Jonathan

Region 3

Terri White, *Deputy Director, Office of Communications and Government Relations*
 Brian Hamilton

Region 4

Trey Glenn, *Regional Administrator*
 Lisa Berrios
 Brandi Jenkins

Region 5

Robert Kaplan, *Acting Regional Administrator*

Region 6

Sam Coleman, *Acting Regional Administrator*
 Arturo Blanco

Region 7

Cathy Stepp, *Acting Regional Administrator*
 Ed Chu, *Deputy Regional Administrator*

Region 8

Martin Hestmark, *Assistant Regional Administrator*
 Kim Varilek

Region 9

Jeff Scott, *Land Division Director*

Region 10

Dan Opalski, *Acting Deputy Regional Administrator*

Office of Environmental Information

Harvey Simon, *Acting Principal Deputy Assistant Administrator*
 Edward Mixon
 Matthew Leopard
 Maja Lee
 Elizabeth Jackson

Office of Land and Emergency Management

Barry Breen, *Acting Assistant Administrator*
 Dana Stalcup, *Deputy Office Director, Superfund*
 Adam Klinger
 Ellen Manges
 Jessica Snyder

Office of Air and Radiation

Sarah Dunham, *Acting Assistant Administrator*
 Pat Childers

Office of Water

Sheila Frace, *Deputy Director, Office of Wastewater Management*
 Macara Lousberg
 Karen Gude

Office of Enforcement and Compliance Assurance

Larry Starfield, *Acting Assistant Administrator*
 Susan Bodine, *Special Counsel to the Administrator on Enforcement*
 Matthew Tejada
 Susan O'Keefe
 Elizabeth Freed
 Christopher Knopes
 Danny Gogal

Office of General Counsel

Justin Schwab, *Deputy General Counsel*

Carol Ann Siciliano

Karin Koslow

Tom Marshall

Allison Hoppee

Lauren Maher

Tricia Jefferson

Office of Research and Development

Richard Yamada, *Deputy Assistant Administrator*

Monica Rodia

Office of the Chief Financial Officer

David Bloom, *Acting Chief Financial Officer*

Allison Mihalich

Office of Chemical Safety and Pollution Prevention

Louise Wise, *Deputy Assistant Administrator*

Oscar Morales

Amanda Hauff

Office of International and Tribal Affairs

Jane Nishida, *Acting Assistant Administrator*

Katrina Cherry, *Acting Deputy Assistant*

Administrator

Felicia Wright, *Acting Director, American Indian*

Environmental Office

Jeff Besougloff

Rebecca Roose

Luke Jones

Treda Grayson

David Jones

Rosalva Tapia

Paige Lieberman

Andrew Byrne

Dona Harris

Francine St. Denis

Elias Abunassar

Rose Brooks



Tribal Partnership Groups

National Tribal Air Association

Wilfred J. Nabahe
Colorado River Indian Tribes

Andy Bessler
Institute for Tribal
Environmental Professionals

National Tribal Toxics Council

Russell Hepfer
Vice Chairman,
Lower Elwa Klallam Tribe

Tribal Pesticide Program Council

Fred E. Corey
Aroostook Band of Micmacs

National Tribal Science Council

Jeffrey M. Mears
Oneida Nation

**Exchange Network Tribal
Governance Group**

Frank Harjo
Muscogee Creek Nation

National Tribal Water Council

Ken Norton
Hoopa Valley Tribe

**Tribal Waste and Response
Assistance Program**

Virginia LeClere
Prairie Band of Potawatomi

E-Enterprise Leadership Council

Micco Emarthla
Seneca-Cayuga Nation

Table of Contents

Table of Contents.....	1
Office of Land and Emergency Management	2
Oil Production Infrastructure located in Eagles Nest Arroyo, San Juan River Watershed	5
G.M. Massena Superfund Site (Region 2)	5
Grasse River (a.k.a. Alcoa Aggregation) (Region 2).....	7
St. Regis Paper Company (Region 5) (Updated as of August 2017).....	8
Tar Creek (Region 6) (Updated as of August 2017).....	9
Bonita Peak Mining District (Region 8)	10
Portland Harbor (Region 10) (Updated as of September 2017)	11
Eastern Michaud Flats (EMF) – FMC and Simplot Operable Units (Region 10) (Updated October 3, 2017)	13
Office of International and Tribal Affairs	14
Solid Waste and Recovered Materials Collection, Transportation, Backhaul and Disposal under the Indian Environmental General Assistance Program	14
Office of Air National Issues.....	16
Office of Air and OECA National Issues.....	17
Volkswagen Partial Consent Decree	17
Office of Water National Issues	18
Status of “Waters of the United States” (WOTUS) Rulemaking	18
Pebble Deposit/Bristol Bay Watershed CWA Section 404(c) Review	20
Background: On July 11, 2017, EPA issued a proposal to withdraw its 2014 CWA Section 404(c) Proposed Determination (PD) regarding a potential mine at the Pebble deposit, a large, low-grade copper and gold deposit located in the Bristol Bay watershed in southwest Alaska.....	20
As part of a May 11, 2017 settlement agreement resolving all outstanding lawsuits between the EPA and the Pebble Limited Partnership (PLP), whose subsidiaries own the mineral claims at the Pebble deposit, the EPA agreed to initiate a process to propose to withdraw its 2014 PD by July 11, 2017. The proposal reflects the EPA Administrator’s decision to provide PLP with additional time to submit a CWA Section 404 permit application to the Army Corps of Engineers and potentially allow the Army Corps permitting process to initiate without having an open and unresolved Section 404(c) review.....	20
On July 11, 2017, the EPA initiated consultation on the proposal to withdraw with federally-recognized tribal governments in the Bristol Bay region and Alaska Native Claims Settlement Act (ANCSA) Regional and Village corporations with lands in the Bristol Bay watershed. This consultation period ends on October 17, 2017.	20
Status of Long-term Water Quality Monitoring on the Animas and San Juan Rivers Following the Gold King Mine Release.....	21

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Operation and Maintenance (O+M) of Tribal Drinking Water and Wastewater Utilities.....	23
Tribal Drinking Water Access Measure - National Program Measure SDW-18.N11	23
Funding for Tribal Drinking Water & Wastewater Infrastructure Summary	24
Region 4	24
Miccosukee Tribe Water Quality	24
Seminole Tribe of FL Water Quantity and Water Quality Concerns.....	25
Region 8	25
UIC Issue, Proposed Powertech (USA) Inc. Dewey Burdock Uranium In-Situ Recovery Site.....	25
White Mesa Mill, Utah.....	26
Status of 40 CFR Part 192 Proposed Rule Addressing In-situ Uranium Recovery.....	27
Region 9	27

National Topics of High Level Interest

Office of Land and Emergency Management

Superfund Task Force

- The Superfund program is a cornerstone of the work that EPA performs for citizens and communities across the country.
- On July 25, Administrator Pruitt accepted recommendations from the task force established on May 22 to revitalize the Superfund program.
- Administrator Pruitt said, “My goal as Administrator is to restore the Superfund program to its rightful place at the center of the agency’s core mission.”
- The task force’s recommendations focused on five overarching goals:
 - Expediting cleanup and remediation;
 - Reinvigorating cleanup and reuse efforts by potentially responsible parties;
 - Encouraging private investment to facilitate cleanup and reuse;
 - Promoting redevelopment and community revitalization; and
 - Engaging with partners and stakeholders.
- Work to prioritize and reinvigorate the program by the task force has been initiated and will be ongoing into the future.

CERCLA 108(b) Financial Responsibility for Hard Rock Mining Proposed Rule

- Under CERCLA Section 108(b), Congress directed the EPA to develop financial responsibility requirements consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.
- A key purpose of these requirements is to help ensure that owners and operators of facilities make financial arrangements to address the risks to public health and the environment posed by hazardous substances at their sites so that the burdens associated with cleanup do not fall to the federal Superfund program and the American taxpayers.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

- The public comment period for CERCLA 108(b) financial responsibility has ended, and, consequently, EPA is limited on the level of detail we can provide regarding the final action.
- In addition, we are no longer able to accept new information or comments.
- EPA provided Tribal Consultation to the 567 federally-recognized tribes pre-proposal under EPA's tribal consultation policy. Upon learning of this, the Alaska Native Claims Settlement Act (ANCSA) resource managers complained that they were not offered the same opportunity.
- As a result, EPA provided consultation to the ANCSAs under Executive Order 13175. EPA conducted webinars for the ANCSAs and tribes in January 2017, and held a follow-on call with the ANCSAs in March 2017.
- As you know, the comment period on the proposed rule (published in the Federal Register on January 11, 2017) was scheduled to close on March 13, 2017. However, EPA received numerous requests to extend the date and provide the public additional time to submit comments on the proposal. In response to the requests, the comment period was extended and comments on the proposed rule were due by July 11, 2017. ANCSA and tribal consultations coincided with the public comment period.
- Key issues cited by the tribes in their comments included support for the rule.
- Key issues cited by the ANCSAs in their comments included concern over the potential costs and benefits of the rule and opportunity to consult with EPA early in the regulatory process.
- EPA received a total of approximately 11,000 comments, with about 200 providing unique, substantive comments.
- EPA is currently reviewing comments and developing a final action on the proposed rule, and working toward a December 1, 2017 court-ordered deadline to issue the final action.

e-Manifest

e-Manifest is a national, user fee funded tracking system that will enable hazardous waste manifests to be completed and transmitted electronically. As electronic manifest usage is optional, the system will also collect the final copy of paper manifests from waste receiving facilities, enabling EPA to establish a national data base of all manifest data. EPA plans to launch the system in June 2018. The system has been and will continue to be available for testing through Spring 2018.

Benefits of the system include:

- Cost savings
- Accurate and more timely information on waste shipments
- Rapid notification of discrepancies or other problems related to a particular shipment
- Creation of a single hub for one-stop reporting of manifest data to EPA and the states
- Increased effectiveness of monitoring of waste shipments by regulators
- Potential for integrating manifest reporting with the RCRA biennial report process and other federal and state information systems

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

The e-Manifest Fee Rule is scheduled for issuance in December 2017. It will announce the methodology by which user fees will be determined and revised to keep pace with program costs. When the system is operational, user fees will be assessed on a per manifest basis from receiving facilities.

The Fee Rule preamble section on Tribal Consultation and Coordination concludes that the Rule has no tribal implications per EO 13175, i.e., no new requirements imposed on tribal officials, no substantial direct compliance costs, no enforceable duties on tribes, nor any mandates for tribal governments. Thus, no coordination activities have been conducted to date, and none are currently planned in the coming months. EPA, however, will conduct outreach to tribes as part of its implementation and communications effort.

Permitting of Coal Combustion Residuals (CCR) Disposal under the WIIN Act

- On April 17, 2015, the EPA promulgated federal regulations for the disposal of coal combustion residuals (CCR) in landfills and surface impoundments.
- On December 16, 2016 President Obama signed the WIIN (Water Infrastructure Improvements for the Nation) Act, giving EPA authority to review and approve state CCR permit programs.
- Once a state program is approved by EPA and permit is issued, the permit will operate “in lieu” of federal CCR regulations.
- States may request EPA to review and approve their CCR permit program; EPA will also develop permits for those CCR facilities located in states without an approved program “subject to the availability of appropriations specifically provided to carry out a program...”
- In Indian Country, EPA must implement a permit program for CCR facilities, which are
 - Bonanza Power Plant in Uintah City, Utah; owned/operated by Desert Generation and Transportation Cooperative; Ute Tribe; R8
 - Navajo Generating Station in Coconino County, AZ; owned/operated by Salt River Project; Navajo Tribe; R9
 - Four Corners in San Juan City, NM; owned/operated by Arizona Public Service Co.; Navajo Tribe; R9
- EPA has engaged Region 8 and Region 9 on coordinating tribal consultation for those 3 facilities.
- We want to work with our tribal partners as we move forward implementing the WIIN Act.

Infrastructure Task Force

EPA collaborates internally and externally on initiatives such as the Infrastructure Task Force (ITF) Waste Programs Sub-Workgroup. The ITF was identified as an important task in the FY 2018 President's Budget. ORCR is the federal government lead for ITF Work Team 1, which developed the report, *Overcoming Barriers to Sustainable Waste Management in American Indian/Alaska Native Communities*. ORCR is collaborating with the tribal and federal partners to finalize the document in early FY 2018. We will then coordinate federal agencies' follow-up activities. Additionally, we are implementing the activities outlined in the FY 2017 EPA/Indian Health Service (IHS) Memorandum of Understanding.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Alaska Hazardous Waste Backhaul

Alaskan Native Villages in rural areas require a more cost-effective, safe and orderly way to manage materials that should not go in a rural landfill, such as batteries, fluorescent bulbs, and electronics. EPA Region 10, Alaska Department of Conservation, and the Solid Waste Alaska Task Force have collaborated to develop Backhaul Alaska, a program that will coordinate backhaul services for rural communities. Once fully implemented, Backhaul Alaska will reduce the cost of backhaul by coordinating hazardous material transportation services and will increase revenue by recycling commodities in bulk quantities, such as lead acid batteries. The program will be tested during two pilot projects in 2018 and 2019. The project team is currently developing the pilot project plan, engaging transporters to refine the program, finalizing a village backhaul training program, and evaluating options for long-term program financing.

Site Specific

Oil Production Infrastructure located in Eagles Nest Arroyo, San Juan River Watershed

Who may bring up the issue: Scott Clow, Environmental Director, Ute Mountain Ute Indian Tribe

Background: EPA coordinates with tribes when conducting inspections of facilities subject to the Spill Prevention, Control and Countermeasure (SPCC) rule that are located in Indian Country. Specifically, EPA has conducted inspections at oil production operations in the “Eagles Nest” arroyo section of the San Juan River watershed. The Ute reservation is mostly within Colorado (Region 8) with portions in New Mexico (Region 6). The area also has several abandoned well sites with deteriorating infrastructure and significant liability issues. The tribe has documented numerous crude oil incidents in the past 10 years. The primary issue is whether these spills have reached waters of the United States.

EPA’s Response: EPA Regions continue to work closely with our tribal stakeholders, including the participation of SPCC inspections in Indian Country and sharing of information related to these inspections. Region 8 has inspected oil production operations within tribal boundaries and has the lead in reviewing the Eagle’s Nest Arroyo area (under agreement with Region 6) where spills have occurred to determine if they reached waters of the United States (the relative permanence and/or significant nexus with the San Juan River). Region 8’s OPA and RCRA Enforcement Programs are aware of the concerns and we are working closely with the Tribe and the oil producer. Region 8 enforcement will evaluate all options, including compliance assistance in ensuring compliance with the CWA/OPA/RCRA.

G.M. Massena Superfund Site (Region 2)

Who may bring up the site: St. Regis Mohawk Tribe (SRMT)

Background:

- There are approximately 4,000 St. Regis Mohawks living on land located adjacent to the GM site in Massena, NY. The site has contaminated tribal property.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

- The manufacturing plant was demolished in 2011, the slab and soils under the plant were removed in 2012. In 2013, the majority of Operable Unit (OU) 1 Soils were removed from the site and in 2014 the East Disposal Area was excavated and covered with a temporary cap. In 2015 – 2016, a 150' waste-free buffer zone around the landfill was created and the landfill was capped.

Issues:

- Landfill: The Tribal Council wants the landfill removed.
 - The approximately \$100 M cost to remove the landfill off site was not contemplated during the GM bankruptcy settlement. As a concession, the Tribe asked that the landfill be moved 150 feet from Tribal property in order to obtain Tribal concurrence on the bankruptcy settlement. The landfill move was negotiated and funds (\$9M) were included in the fund to remediate the GM site. The remedial action began in 2015 and the final cap for the East Disposal Area and Landfill was completed in 2016. This year, the site is being capped with a clean soil cover to improve storm water drainage. Additional work planned for 2017 was the remediation of the 10-million gallon lagoon but record high rainfalls in the northeast prevented the dewatering of this lagoon and the work has been delayed. It is expected that the lagoon will be remediated and groundwater controls will be completed in 2018.
- The Tribal Council has been in contact with EPA on issues related to perceived air impacts from the remediation at the Site.
- The Region considers this to be a success but the tribal council has a zero tolerance for releases and potential releases.
- The Region worked consistently with the Tribal staff and the potentially responsible party (PRP) to constantly modify field procedures to avoid the potential for air releases.
- SMRT leaders remain concerned about cumulative risk from PCBs and have requested EPA support initiation of an epidemiological study.
- Tribal Council has recently passed a resolution which could subject EPA or RACER Trust employees and contractors subject to penalties of \$25,000 per day if a Tribal air standard (which is an order of magnitude lower than the EPA standard) is violated. This has led schedule delays while air monitoring issues are finalized.

Agency Position: The Agency is on track to complete currently identified remedies.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Grasse River (a.k.a. Alcoa Aggregation) (Region 2)

Who may bring up the site: St. Regis Mohawk Tribe (SRMT)

Background:

- The Grasse River site (a.k.a., Alcoa Aggregation), is located along the northern boundary of New York State in the Town and Village of Massena, and encompasses approximately 7.2 miles of the lower Grasse River from Massena to the confluence of the St. Lawrence River. The site is contaminated with PCBs.
- After an extensive consultation with the SRMT, EPA issued the record of decision (ROD) in April 2013. The ROD includes dredging, capping, habitat reconstruction, and long-term monitoring.
- The PRP initiated the remedial design in April 2013.
- From the 2013 ROD: “The United States maintains that Akwesasne, the Mohawk territory of the federally-recognized Saint Regis Mohawk Tribe (SRMT), as described in the 1796 Treaty with the Seven Nations of Canada, 7 Stat. 55, includes land on both banks of the lower Grasse River, as well as land located along the St. Lawrence River downstream of the Site, together known as the Indian Meadows.” Also: “EPA notes, however, that the lands reserved by the 1796 Treaty are currently in dispute. *See Canadian St. Regis Band of Mohawk Indians v. State of New York, et al.*, 5:82-cv-783 (N.D.N.Y.). Fishing, hunting, harvesting and spiritual ceremonies are among the activities that have been historically and are now conducted by the SRMT in the lower Grasse River and the Indian Meadows.”

Status:

- EPA continues to work closely with the SRMT Environment Division. The intermediate remedial design report was submitted by the PRP in 2017 and the draft final remedial design report is anticipated to be completed in 2018.
- In an April 2017 letter, SRMT requested a consultation meeting with EPA to discuss the implications of EPA’s 2016 “Treaty Right Guidance” and 2017 memorandum on Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program in regards to the Indian Meadows along the Grasse River site.
- SRMT also requested a meeting between the EPA project team and SRMT’s recently formed Akwesasne Cultural Resource Program’s staff to discuss potential risks associated with using culturally significant species (plant and animal) growing in or living around the Indian Meadows along the Grasse River site.

Agency Position: EPA/SRMT had a conference call in April 2017 to discuss the 2016 Guidance and 2017 memorandum listed above. On September 26, 2017, EPA’s project team including the site ecological risk assessor and human health risk assessor present to and spoke with the SRMT Environment Division and the Akwesasne Cultural Resource (ACR) program staffs regarding their questions on potential risks associated with using culturally significant species from the

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Indian Meadows along the Grasse River site. EPA also provided written responses to questions from the SRMT ACR.

St. Regis Paper Company (Region 5) (Updated as of August 2017)

Who may bring up the site: Leech Lake Band of Ojibwe (LLBO)

Background:

- The St. Regis Paper Co. Site is a federal enforcement-lead site located mainly on nontribally owned land within the Leech Lake Reservation in north-central Minnesota. Soil (dioxins, PAHs) and groundwater (pentachlorophenol, PAHs) were contaminated by a former wood preserving facility.
- In March 2016, Region 5 issued a proposed plan for a soil remedial action on residential properties that finds the dioxin cleanup level specified in the LLBO Hazardous Substances and Control Act to be an ARAR. Region 5 will issue the ROD after preparing a response to comments received on the Proposed Plan.
- The 2011 human health and ecological risk assessment accounted for the greater exposure of tribal persons to contaminated media, including fish and wild rice. Despite this, LLBO rejects the conclusions of the risk assessment, particularly that site-related contamination in fish is too low to require any specific remedial action.
- The LLBO disagrees with portions of the 2015 five-year review report, which determined that the groundwater remedy is “short-term protective.”
- In April 2017 EPA and LLBO consulted on the use of institutional controls at the site and the status of the groundwater remedy.

Issues:

- EPA recently issued a proposed plan for soil on residential properties, which finds the dioxin cleanup level specified in the LLBO Hazardous Substances and Control Act to be an ARAR, and is evaluating public comment and the site’s administrative record before issuing the decision.
- LLBO disagrees with the risk assessment’s conclusions and groundwater remedy’s short-term protectiveness.

Agency Position: EPA continues to work closely with the Tribe to achieve a sitewide remedy that protects the local population’s long-term health and respects treaty protected resources, within EPA’s Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) authority.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Tar Creek (Region 6) (Updated as of August 2017)

Who may bring up the site: Inter-Tribal Environmental Council (ITEC), Cherokee Nation, Eastern Shawnee, Miami Tribe, Modoc Tribe, Quapaw Tribe, Ottawa Tribe, Peoria Tribe, Seneca-Cayuga Tribe, Shawnee Tribe, and the Wyandotte Tribe.

Background/Current Status:

- EPA continues to coordinate with the tribal groups interested in the Tar Creek site through periodic meetings and conference calls that provide updates and discussion opportunities related to progress and schedule for remedial action (OU2 and OU4) and remedial investigation (OU5). The interested parties include ITEC, Cherokee Nation, Eastern Shawnee, Miami Tribe, Modoc Tribe, Quapaw Tribe, Ottawa Tribe, Peoria Tribe, Seneca-Cayuga Tribe, Shawnee Tribe, Wyandotte Tribe, and the Bureau of Indian Affairs.
- Building on the Quapaw's success in completing the \$2.6 million remediation of a 40-acre parcel of tribal land known as the 'Catholic 40' within the Tar Creek Superfund site, the Quapaw Tribe Environmental Office is conducting a pilot project using soil amendments which have been applied to impacted transition soils to reduce the bioavailability of the metals of concern. The Tribe has performed the remedial action at another portion of tribal lands known as Beaver Creek North (CP060) and is currently performing the remedial actions at Distal 10, 12, and 13. The Tribe is also performing remedial actions under agreements with the Oklahoma Department of Environmental Quality.
- Additional information from Region 6: "We have observed that the Tribe is very good at performing the construction work. They are very efficient in the construction efforts and have shown the ability to work at a very quick pace (trucks loaded/hour, etc.). The documentation efforts are a work in progress. They are getting better at the work plans required under the Cooperative Agreement (CA), and providing approvable budgets. We maintain a high level of coordination efforts with the Tribe to ensure that we don't veer off-track."
- In addition to OU4 source remediation, EPA continues to coordinate with Region 7, three states (Oklahoma, Missouri, Kansas), eight Tribes (Quapaw, Peoria, Ottawa, Miami, Eastern Shawnee, Wyandotte, Seneca-Cayuga, and Cherokee), and other federal and state agencies (U.S. Fish and Wildlife, U.S. Geological Survey, Oklahoma Department of Wildlife) to characterize and complete a human health risk assessment for surface water and sediment. Together, the team finalized the planning documents and started field sampling in July 2017, which will continue into August 2017. The project area consists of seven watersheds and covers approximately 437 square miles and 119 river miles.

Agency Position: The Quapaw Tribe's efforts in the remediation of tribal land is progressing well. The EPA envisions this joint effort will continue as progress is made in remediating the Site.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Bonita Peak Mining District (Region 8)

Who may bring up the Site: Navajo Nation, Ute Mountain Ute Tribe, Southern Ute Indian Tribe, and Ute Indian Tribe

Background:

- The Bonita Peak Mining District (site) is comprised of 46 individual mine or mining-related sources and two study areas where ongoing releases of metal-laden water and sediments are occurring within Mineral Creek, Cement Creek, and the Upper Animas River in San Juan County, Colorado.
- Contaminants found in these sources and in the surface water include: arsenic, cadmium, copper, manganese, zinc, lead and aluminum. These contaminants impact fisheries harvested for human consumption, as well as wetlands and habitat for the threatened Canada lynx.
- In September 2016, EPA finalized the site's NPL addition, making it eligible for additional study and cleanup resources under the EPA's Superfund program. A comment period for the proposed listing was from April 7, 2016 thru June 13, 2016. The EPA is currently conducting sampling in support of the site's RI/FS.
- On December 8, 2016 Sunnyside Gold Corporation filed a petition for review of the final NPL listing in the DC Circuit Court of Appeals. EPA and the Department of Justice are defending the final listing.

Issue:

- Pursuant to CERCLA section 104(b), EPA sent notices to the individual tribes regarding their role as potential natural resource trustees at the site in August 2016. In these letters, the Agency sought to coordinate the site's assessments, evaluations, investigations, and planning and sought input on information or studies that should be considered in the site remedy selection and design at the Site.
- EPA has reimbursed over \$3 million in response costs through cooperative agreements with states, tribes, and local governments associated with the August 2015 Gold King Mine release. Both the Southern Ute Indian Tribe and the Navajo Nation received reimbursements for CERCLA response costs from EPA, as well as Clean Water Act funds for water quality monitoring on the reservation. Also, the Ute Mountain Ute Tribe received Clean Water Act funds that can be used for water quality monitoring and preparedness planning on the reservation.
- The Navajo Nation has commented on the proposed Bonita Peak Mining District NPL listing, suggesting that the site's boundaries be extended downstream along the Animas River to locations where contamination is located and to downstream areas impacted by the Gold King Mine release. In addition, Navajo Nation also commented that all local communities, including downstream communities, be allowed to participate in the Superfund process.
- On August 16, 2016, the Navajo Nation filed a lawsuit against the EPA in the District of New Mexico under sections 107 and 113 of CERCLA associated with the August 5, 2015 Gold King Mine Release, in addition to other claims.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Agency Position: The EPA will continue to consult with the tribes throughout the Superfund process.

Portland Harbor (Region 10) (Updated as of September 2017)

Who may bring up the site: The Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the Siletz, Grand Ronde, Warm Springs and Umatilla

Background:

- The Portland Harbor site is an enforcement-lead site that spans the lower 10 miles of the Willamette River in Portland, Oregon. Although the site is not located on any of the tribes' reservations, it is within or impacts these tribes' Usual and Accustomed Areas.
- EPA coordinated with the six Federally Recognized Tribes during the RI/FS process.
- The tribes also continue to participate in the technical oversight group (with EPA and other co-regulators).
- Prior to the release of the proposed plan in June 2016 the Region 10 Administrator and Director for the Office of Superfund Remediation and Technology Innovation participated in multiple tribal consultations with Nez Perce, Siletz, Grand Ronde, Yakama Nation, and Umatilla Tribes.
- These consultation meetings covered EPA's proposed remedy and allowed EPA to have meaningful dialogues with the tribal councils on their concerns related to the Portland Harbor cleanup prior to issuing the proposed cleanup plan.
- In July 2016, Administrator Gina McCarthy consulted with leaders of the Yakama Nation. The meeting was primarily an opportunity for EPA to listen to the Yakama Nation, who focused on treaty rights and cited minutes of the 1855 treaty negotiations. The Yakama stated that the proposed remedy does not meet their treaty rights as intended in 1855 and proposed "Alternative G" with modifications for additional work.
- On January 3, 2017, Administrator Gina McCarthy signed the site's final ROD.
- The EPA, Oregon Department of Environmental Quality (ODEQ), Tribes and others continue to be involved in the Portland Harbor Natural Resource Trustee Council.
- The Tribes continue to participate in the technical oversight group (with EPA and other co-regulators).
- Following the release of the ROD, EPA Region 10 has been working closely with the tribes in the development of the baseline sampling plan for the early stages of PH cleanup implementation. We continue to have regular technical meetings to ensure Tribal input are received.

Issue: The Tribes have expressed concern about ongoing negotiations for sampling and remedial design work as funding language that has encouraged direct funding of the Tribes in the past may not be included in some agreements going forward. The Tribes feel this could

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

diminish their ongoing involvement. In response, EPA has offered direct funding to bridge this gap, but this will necessarily increase oversight costs over past practices at the site.

The Tribes are also concerned about their voice in negotiations where some respondents have asked that associated work plans be attached to administrative orders on rapid schedules, possibly limiting opportunities for technical input they have been accustomed to leading up to the ROD due to the enforcement confidential nature of such negotiations.

Agency Position: The EPA Regional Administrator met with the Yakama Tribal Council on January 5, 2017, regarding the release of the ROD. The Agency will continue to coordinate with the six federally-recognized tribes during remedy implementation.

Issue: The Yakama Nation stated that it opposes state-led implementation of the in-water cleanup at this site and that it expects to be fully engaged in oversight during cleanup.

Agency Position: EPA and the State of Oregon are discussing post-ROD remedy implementation. The goal is to begin cleaning up the site quickly while adhering to EPA's laws, guidance and standards. EPA plans to use CERCLA authorities and to retain final approval of all in-water cleanup work. EPA will continue to uphold its trust responsibilities to the tribes during site cleanup. Now that the ROD is signed, EPA will update the memorandum of understanding confirming the tribes' role in overseeing cleanup activities. EPA worked closely with the tribes during the RI/FS and expect to continue to work closely with them during design and implementation of the remedy.

The Tribes have expressed concern about ongoing negotiations for sampling and remedial design work as funding language that has encouraged direct funding of the Tribes in the past may not be included in some agreements going forward. The Tribes feel this could diminish their ongoing involvement. In response, EPA has offered direct funding to bridge this gap, but this will necessarily increase oversight costs over past practices at the site. The Tribes are also concerned about their voice in negotiations where some respondents have asked that associated work plans be attached to administrative orders on rapid schedules, possibly limiting opportunities for technical input they have been accustomed to leading up to the ROD due to the enforcement confidential nature of such negotiations.

Hanford Area D&H Operable Units

Background:

The Hanford Site sits on 586 square miles of federally owned shrub steppe desert in southeastern Washington State. The 100 D&H area covers approximately 7.8 square miles adjacent to the Columbia River. From 1943 to 1990, the primary mission of the Hanford site was the production of nuclear materials for national defense. The 100-D, 100-DR and 100-H Reactors and associated facilities generated large amounts of liquid and solid wastes. Liquid contaminants were released to the environment by discharging effluent to the soil and the Columbia River. Solid waste was placed into

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

burial grounds. EPA, DOE and the Washington State Department of Ecology are working on a final draft Record of Decision (ROD) for the 100 D&H area. The ROD was tentatively scheduled to be briefed to the Administrator in October 2017, but a 6-month delay is anticipated as DOE works through consultation activities.

Issue/Current Status: The Yakama Nation has expressed that they want cleanup to pre-Hanford conditions for Hanford's River Corridor, which is located along the Columbia River. There are tribal concerns over treaty rights in relationship to land management and tribal land use and with Tribal interpretation of the National Historic Preservation Act. The Yakama Nation has provided extensive comment on documents related to this decision and are actively involved.

Agency Position: As the lead cleanup agency, DOE is responsible for consulting with tribes on decision at the Hanford Site. DOE is currently working to establish a follow up consultation with the Yakama regarding the 100 D&H ROD. EPA is committed to working with our Tribal partners and remain available to meet with Tribes when requested and to be responsive to questions directed to EPA.

Eastern Michaud Flats (EMF) – FMC and Simplot Operable Units (Region 10) (Updated October 3, 2017)

Who may bring up the site: Shoshone-Bannock Tribes of the Fort Hall Reservation in Southeast Idaho.

Background: Site contamination originated from two phosphate ore processing plants. The FMC Operable Unit (OU) is located mostly within reservation boundaries; the Simplot OU is adjacent to the reservation. The Tribes did not concur on the 1998 ROD or Interim ROD Amendments (IRODAs; 2010 and 2012) and have often opposed actions taken to implement the selected interim remedies. The Tribes receive CERCLA cooperative agreement funds for the purpose of providing EPA with comments on FMC OU and Simplot OU deliverables.

FMC Operable Unit: The 2012 selected interim remedy includes: 1) soil caps to shield gamma radiation and inhibit percolation, and 2) contaminated groundwater extraction and treatment. FMC is implementing the remedy under a 2013 Unilateral Administrative Order (UAO). Soil remedial action construction began September 2014 and will be mostly complete October 2017. Additional geologic, hydraulic, and groundwater quality data are needed to advance the groundwater remedial design.

EPA is largely in agreement with two Tribal concerns regarding enforcement of the 2013 UAO to implement the interim remedy. 1) FMC failure 2015-17 to move excavated pyrophoric debris offsite or propose an onsite treatment approach to remove ignitable/reactive characteristic and

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

2) FMC failure to adequately respond to EPA comments of July 15, 2017 on a time-critical groundwater investigation work plan. The Idaho Department of Environmental Quality (IDEQ) is also generally in agreement with the Tribes and EPA on these two topics.

The Tribes have in the recent past (2014-17) expressed a variety of other RD/RA implementation concerns with which EPA either disagreed or has addressed. Currently, EPA and the Tribes appear to be in disagreement about how to respond to the 2016 Argonne National Laboratory (ANL) report which evaluated elemental phosphorous excavation and treatment technologies (ETTs). The ANL report did not identify any new ETTS, and EPA believes the interim remedy must be constructed and evaluated over time before conducting additional work to support a final remedy decision.

Simplot Operable Unit: Until recently, wastes from the Don Plant were placed on a large, unlined gypsum stack near the plant, allowing liquid wastes to move into groundwater. By December 2017, Simplot will complete construction of a series of liners that will prevent releases to groundwater and contain future waste gypsum. Extraction and treatment of contaminated groundwater continues, with extracted groundwater reused as process water.

The Tribes have expressed a variety of concerns about on-going industrial operations, waste handling practices, and implementation of the interim remedy. EPA continues to work with the Tribes and IDEQ to address concerns which arise implementing the interim remedy.

Office of International and Tribal Affairs

Solid Waste and Recovered Materials Collection, Transportation, Backhaul and Disposal under the Indian Environmental General Assistance Program (GAP): FY2016 - FY2020

Who may bring up the issue: Any of the federally recognized tribes

Background:

- The FY2016 Omnibus Appropriations Act directs EPA to make financial assistance under the Indian Environmental General Assistance Program (GAP) to eligible Indian tribal governments available for activities involving “solid waste and recovered materials collection, transportation, backhaul, and disposal services for the period of fiscal years 2016 through 2020”.
- The aforementioned activities are considered “general government services” and would not be funded by GAP, according to the GAP Guidance (2013).
- However, pursuant to the omnibus language, financial assistance agreements funded with GAP FY 2016-2020 resources for activities taking place through the end of FY

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

2021 may contain activities involving solid waste and recovered materials collection, transportation, backhaul, and disposal services.

- OITA has provided additional information for GAP Project Officers and grantees about the types of activities that are allowable under the FY16 Appropriations Act, which is available at <https://www.epa.gov/tribal/implementation-activities-related-solid-waste-and-recovered-materials-are-allowable-gap>.

Status of the 2013 GAP Guidance

Who may bring up the issue: Any of the federally recognized tribes

Background:

- OITA issued revised guidance for the administration of Indian Environmental General Assistance Program (GAP) funds in 2013. The Guidance fulfilled one of OITA's commitments under a 2008 OIG report that directed the office to develop and implement an overall framework for achieving capacity, including valid performance measures for each type of tribal entity, and provide assistance to the regions for incorporating the framework into the IGAP work plans.
- During development of the guidance and throughout implementation of the guidance for the past four years, some tribes have expressed a range of concerns associated with activities that are not eligible for funds, as well as some concerns with burden from planning and reporting.
- Other tribes seem to have embraced the Guidance and have been working with EPA regional staff to make any necessary adjustments to their work plans to adhere to the components of the framework established in the 2013 Guidance.
- On September 18, 2017, the Hualapai Tribe sent a letter to Senator McCain articulating high level concerns with the 2013 Guidance and how it has been implemented.
- The NTC FY19 Budget Priority Guidance included a request for EPA to suspend implementation of the guidance until a tribal/EPA workgroup is formed and develops new guidance.

Response: Per a prior commitment, during 2018 OITA intends to begin a process of evaluating the 2013 Guidance to consider opportunities to improve the guidance while continuing the important progress made through implementation of the framework for achieving performance under GAP. OITA will be engaging with the NTC and other tribal representatives to explore options for an effective process for tribal engagement throughout OITA's review of the current guidance.

Office of Air National Issues

Status of the Reconsideration of the Oil and Gas Rules

Who's likely to bring up the Issue: Ute Tribe of the Uintah and Ouray, The Three Affiliated Tribes of Fort Berthold and other Region 6 and 8 tribes.

Background: Many tribes in Regions 8 and 6 have oil and gas development on their lands. Tribes were consulted on the development of the New Source Performance Standards and other Oil and Gas rules. They are aware of the various stays and reconsideration but aren't sure of the status of the reconsiderations and how they might impact Indian country.

- **EPA's Response: We are in the process of reviewing the comments we got on two proposals to stay portions of the 2016 NSPS for the oil and gas industry while the agency reconsiders issues associated with these requirements.**
 - In June, EPA proposed a two-year stay of the rule's fugitive emissions requirements, well site pneumatic pump standards, and requirements that closed vent systems be certified by a professional engineer.
 - EPA also proposed a three-month stay of the requirements.

How can EPA move ahead with the proposed stays? Didn't the court vacate the first stay the agency issued?

- The proposed stays are separate from an administrative stay that EPA announced in May.
- On July 3, the U.S. Court of Appeals for the D.C. Circuit vacated the administrative stay. But the court emphasized that nothing in its opinion limits EPA's authority to reconsider the oil and gas standards and to proceed with the proposed stays

What does the court's vacatur of the administrative stay mean for the fugitive emissions requirements in the rule – are people supposed to be complying with those now?

As you may recall, the 2016 rule required that the initial monitoring survey be conducted within 60 days of startup, or by June 3, 2017, whichever is later. However, EPA may elect to exercise its enforcement discretion on a case-by-case basis with respect to the fugitive emissions monitoring requirements. Companies that have specific questions regarding their compliance obligations should contact the appropriate regional office.

What will the proposed stays mean for the oil and gas FIP for Indian country?

- As most of you know, the oil and gas FIP points to several rules, including the 2016 New Source Performance Standards.
 - EPA has proposed two stays of certain aspects of those standards while the agency reconsiders them. We are still exploring what those stays – if they are

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

finalized as proposed – would mean for the FIP, so I don't have an answer to that today. We will come back to you when we know more.

- The reconsideration itself is a separate rulemaking process from the proposed stays – and it's too soon to say what action we will take. EPA will issue a proposal related to the reconsideration for notice and comment at a later date.

What is the status of the reconsideration?

- We are still working through the reconsideration process. EPA will issue a separate proposal addressing reconsideration of the rule for public review and comment at a later date.

Office of Air and OECA National Issues

Volkswagen Partial Consent Decree

Who may bring up the issue: Tribes that have participated in the consultation process on the Partial Consent Decree may raise some of the same issues/comments at other national meetings. The National Tribal Air Association has been a leader in organizing tribes to participate in calls and submit comments. Some of the larger tribes participating included: Ute, Chickasaw, Umatilla, Cherokee, Saint Regis Mohawk, and Navajo.

Background: Through a series of three partial settlements, EPA and Volkswagen resolved allegations that Volkswagen violated the Clean Air Act by selling approximately 590,000 vehicles containing 2.0 and 3.0 liter diesel engines equipped with “defeat devices” (“Partial Consent Decree”). The pollutant at issue is nitrogen oxide (NO_x).

Volkswagen will pay \$3 billion to establish and fund two Environmental Mitigation Trusts, one for states and one for Indian tribes, which will enable governmental Beneficiaries to implement projects to reduce NO_x emissions from specific sources (“Eligible Mitigation Actions”). All 50 States, Puerto Rico, the District of Columbia, and federally recognized Indian tribes **may** elect to become Beneficiaries, and in making such an election, must meet specific requirements under the Trusts. The Trusts will be administered by Wilmington Trust, **N.A.** an independent trustee. State and territorial Beneficiaries will receive a specific allocation of funds from the total \$3 billion that can be used for any of the listed Eligible Mitigation Actions all of which are focused on NO_x mission reduction projects.

There is also a separate allocation for tribal Beneficiaries totaling \$55 million to be shared by federally recognized tribes (“Tribal Allocation Subaccount”). The Partial Consent Decrees describe a default process for distributing the funds in the Tribal Allocation Subaccount. DOJ

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

and EPA completed consultation with federally recognized tribes in August, 2016 on the following issues: (i) to determine whether the default process outlined in the Partial Consent Decree will work well for tribes, or whether an alternative method for distributing the funds in the Tribal Allocation Subaccount should be established; (ii) whether and how to direct up to 5% of the Tribal Allocation Subaccount toward technical assistance to help tribes prepare funding requests for Eligible Mitigation Actions; (iii) whether and how tribes wish to nominate candidates to serve as Trustee of the Environmental Mitigation Trust; and (iv) whether tribes are interested in ZEV infrastructure actions and, if so, how to implement the limitation that no Beneficiary may spend more than 15% of its allocation on ZEV actions. The DOJ and EPA convened 3 tribal consultation calls and received written public comment. Several tribes participated. Tribes have provided several comments in the consultation and comment process. Some examples include, interest in a separate tribal Trustee, increased amount and access to a technical assistance fund, increased timeframe for spending allotted funds, and expansion of eligible mitigation projects. In response to the comments received, tribes now have a longer timeframe to access Trust funds, and Institute for Tribal Environmental Professionals (ITEP) will serve as a technical assistance provider to Tribes interested in becoming beneficiaries.

The Trust Effective Date occurred on October 2, 2017. Tribes have 90 days from the Trust Effective Date, which falls on January 2, 2018, to submit Beneficiary certification forms and their first funding requests to Wilmington Trust. Unlike states, tribes are not locked out of the Trust if they do not send in their certification forms shortly after the Trust Effective Date. Tribes may request funding 90 days after the Trust Effective Date or for each funding cycle for years two through six of the Trust—by September 1, 2018, through September 1, 2022, respectively. Any funds remaining in the Tribal Subaccount after six years will be available for up to four additional years or until expended.

EPA's Response: The Agency wants to assure tribes that we recognize tribes as potential Beneficiaries of funds in the VW Partial Consent Decree and that the eligible mitigation projects in Appendix D could provide meaningful NOx reductions on tribal lands.

Office of Water National Issues

Status of “Waters of the United States” (WOTUS) Rulemaking

Who may bring up the issue: Any of the tribal representatives present at the meeting. During the tribal consultation period, of the 32 comment letters submitted by tribes and tribal organizations, two were submitted by tribal organizations that include tribes with representatives on the NTC, including:

- Willie Frank, Nisqually Tribe (Letter from Northwest Indian Fisheries Commission)

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

- Lee Juan Tyler, Shoshone Bannock Tribe (Letter from Upper Snake River Tribes Foundation).

Background: On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....” The E.O. directs that the EPA and the Department of Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos v. United States* (2006). The agencies have begun a two-step rulemaking process to implement the E.O.

- **Step 1 Proposed Rule:** The Step 1 proposed rule would recodify the regulatory text that was in place prior to the 2015 Clean Water Rule and that is currently in place as a result of the stay ordered by the U.S. Court of Appeals for the Sixth Circuit. The proposed rule was published in the *Federal Register* on July 27, 2017 and was open for public comment until September 27, 2017. Several tribes commented on the Step 1 rulemaking (final numbers are not available at this time as the comments are still being uploaded to the docket).
- **Step 2:** The agencies plan to propose a new definition that would replace the approach in the 2015 Rule, taking into consideration the principles that Justice Scalia outlined in the *Rapanos* plurality opinion. This spring EPA, in coordination with the Department of the Army, initiated formal consultations to solicit comments from state and local governments and from tribes regarding such a new definition. Currently, the agencies are holding a series of 10 listening sessions focused on various stakeholder groups and one in-person meeting with small entities to hear their recommendations to revise the definition of WOTUS. The webinars conclude November 21. EPA has also established an administrative docket to solicit written recommendations for the Step 2 rulemaking. The agencies will consider input from the federalism and tribal consultations, as well as the stakeholder recommendations, as they work to develop the proposed Step 2 rule.
 - **Tribal Consultation:** Consistent with the 2011 EPA Policy on Consultation and Coordination with Indian Tribes, the agencies undertook tribal consultation as they began developing the Step 2 revised definition of “waters of the United States.” Several national and regional listening sessions for tribes and two individual tribal and Agency staff-to-staff meetings were held during the consultation period, April 20 through June 20, 2017. The agencies received 32 letters from tribes and tribal organizations as part of the consultation process. Almost all tribes who commented raised concerns about a narrow jurisdictional scope for CWA programs, including rescission of the 2015 rule and a Scalia-only approach to jurisdiction. Tribes also expressed interest in additional information and in continued involvement during development of the Step 2 rule. The agencies are working to honor leader-to-leader or staff-to-staff consultation requests from individual tribes.

EPA’s Response: The agencies are considering tribal comments as we work to finalize the Step 1 rule and propose the Step 2 rule. We are also working to honor individual requests from tribes for consultation. We appreciate tribal input on this important matter, and will continue to engage with

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

tribes as we develop the Step 2 rule.

Pebble Deposit/Bristol Bay Watershed CWA Section 404(c) Review

Who may bring up the issue: Billy Maines, Curyung Tribe (R10).

Background: On July 11, 2017, EPA issued a proposal to withdraw its 2014 CWA Section 404(c) Proposed Determination (PD) regarding a potential mine at the Pebble deposit, a large, low-grade copper and gold deposit located in the Bristol Bay watershed in southwest Alaska.

As part of a May 11, 2017 settlement agreement resolving all outstanding lawsuits between the EPA and the Pebble Limited Partnership (PLP), whose subsidiaries own the mineral claims at the Pebble deposit, the EPA agreed to initiate a process to propose to withdraw its 2014 PD by July 11, 2017. The proposal reflects the EPA Administrator's decision to provide PLP with additional time to submit a CWA Section 404 permit application to the Army Corps of Engineers and potentially allow the Army Corps permitting process to initiate without having an open and unresolved Section 404(c) review.

On July 11, 2017, the EPA initiated consultation on the proposal to withdraw with federally-recognized tribal governments in the Bristol Bay region and Alaska Native Claims Settlement Act (ANCSA) Regional and Village corporations with lands in the Bristol Bay watershed. This consultation period ends on October 17, 2017.

Thus far, OW and Region 10 have held three pairs of webinars with tribal governments and ANCSA corporations. Eight tribal councils/associations and three ANCSA corporations participated in the first webinars, held on July 26. Three tribal councils and one corporation participated in the second webinars on August 14. One tribal council and two corporations participated in the third webinars on September 5.

EPA is also accepting requests for additional individual or group consultation meetings. OW and Region 10 held one such consultation with an individual tribe on August 2 and one with the Bristol Bay Native Corporation on September 12. At this time, all other consultation requests are being scheduled to occur while the OW Deputy Assistant Administrator, Lee Forsgren, is in Alaska October 9-13, 2017.

EPA's Response: EPA's proposal to withdraw its 2014 CWA Section 404(c) Proposed Determination regarding a potential mine at the Pebble deposit reflects the EPA Administrator's decision to provide Pebble Limited Partnership with additional time to submit a CWA Section 404 permit application to the Army Corps of Engineers and potentially allow the Army Corps permitting process to initiate without having an open and unresolved Section 404(c) review. The Agency is currently consulting with federally-recognized tribal governments in the Bristol Bay region and Alaska Native Claims Settlement Act (ANCSA) Regional and Village corporations with lands in the Bristol Bay watershed, and seeking public comment on this important issue. We ask that comments be received by October 17.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Status of Long-term Water Quality Monitoring on the Animas and San Juan Rivers Following the Gold King Mine Release

Who may bring up the issue: Scott Clow, Ute Mountain Ute

Background: While OLEM has led much of the Agency's response to the Gold King Mine release; OW took the lead for providing \$2M to support state and tribal water quality monitoring of rivers impacted by the release as well as decades of mining runoff. OW also worked with OLEM, ORD and the Regions to support: 1) a network of continuous monitoring "sonde" stations and a study of whether these stations could predict high levels of metals; and 2) a year-long EPA study of the fate and effect of metals from the Gold King Mine release. OW is now working in collaboration with the Regions, ORD, states and tribes, including the Ute Mountain Ute, Southern Ute, and Navajo Nation, to develop a long-term water quality monitoring program for the Animas and San Juan Rivers as authorized by the Water Infrastructure Improvements for the Nation Act; Congress appropriated \$4M for this program in FY 17.

EPA's Response: The EPA will continue to work with the Ute Mountain Ute, the Southern Ute, the Navajo Nation, and with states and communities to develop a long-term water quality monitoring program for the Animas and San Juan Rivers.

Water Quality Standards & Tribal Treaty Rights

Who may bring up the issue: Any of the tribal representatives present at the meeting, in particular, tribes from Maine, Washington, and Idaho. In Maine and Washington, EPA incorporated consideration of tribal treaty and similar reserved rights in its review of state water quality standard (WQS) submissions. In Idaho, EPA has been in consultation with several tribes about implications that off-reservation treaty-reserved fishing rights may have on EPA's review of Idaho's December 2016 submission of revised WQS.

EPA Actions in Maine, Washington, and Idaho

- To ensure that its actions were consistent with tribal reserved rights in Maine and Washington, EPA considered these rights in reviewing those states' respective submission of WQS, and in EPA's December 2015 disapproval of some of Maine's human health criteria and its November 2016 disapproval of some of Washington's human health criteria.
- In January 2017, EPA sent a letter to the director of the Idaho Department of Environmental Quality expressing that Idaho should ensure that its human health criteria protect tribal treaty rights, given that several Idaho tribes have off-reservation treaty rights.
- Maine has challenged EPA's disapproval of its WQS, and in August 2017, EPA informed the court in that pending litigation that it intends to reconsider its actions, and was granted a 120 day stay of the litigation to undertake that reconsideration.

EPA's Response: EPA recognizes that under the Constitution, treaties are part of the supreme law of the land, with the same legal force as federal statutes. While treaties do not expand EPA's authority, EPA must ensure its actions do not conflict with tribal treaty rights. EPA will continue to work with states to account for tribal treaty rights in the development of state water quality standards.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Baseline Water Quality Standards Effort

Who may bring up the issue: Any of the tribal representatives present at the meeting.

Background: EPA published an Advance Notice of Proposed Rulemaking on September 29, 2016, to request public input on whether EPA should promulgate “baseline” federal water quality standards to help fill the gap in Clean Water Act protection that exists in a majority of Indian reservation lands nationally that do not currently have CWA-effective WQS in place.

- Of over 300 reservations, fewer than 50 have applicable WQS under the CWA.
- Although more tribes each year are found eligible to run WQS programs of their own, many smaller tribes may never have this capability.
- States generally do not have jurisdiction in Indian country.

During the public comment period, which closed in December 2016, EPA received comments from 12 tribal governments and associations, 10 state officials, the Western States Water Council, 11 private citizens, and one industry group.

- Most of the tribal comments were supportive. The National Tribal Water Council in particular has been vocal in supporting this action. Some tribes have raised concerns with this action.
- Some states had supportive comments, but the remainder of state letters raised concerns related to the establishment of WQS and the potential implementation impacts of those WQS, including potentially conflicting standards across bordering state-tribal jurisdictions.

EPA staff have reviewed the comments and are preparing materials to apprise management of the questions and concerns raised during the public comment period and identify potential next steps. The materials will also explain EPA authorities and existing regulatory processes (e.g. 40 CFR 131.7 dispute resolution mechanism) that offer potential resolution to concerns raised.

EPA’s Response: Tribal baseline water quality standards are on EPA’s long-term regulatory agenda with OMB. The docket is still accessible to the public. We are considering the comments received during the public notice period to inform decisions moving forward. Meanwhile, we continue to focus our work efforts on tribal water quality standards, urging tribes to look at the new resources available to assist tribes to get their own WQS in place.

303(c) TAS Applications

Who may bring up the issue: Any of the tribal representatives present at the meeting, especially representatives from tribes with an active TAS application for an EPA program. For example, active applications for the water quality standards program that could be ready for approval in the next six months include those from the Colville Reservation (WA), Morongo Band (CA), Quinault (WA), Rincon Band (CA), Southern Ute (CO), Citizen Potawatomi Nation (OK), and Yurok (CA) tribes.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Background: Several EPA statutes, including the Clean Air Act, Clean Water Act, and Safe Drinking Water Act, authorize EPA to treat eligible tribes in a similar manner as a state. This extension of cooperative federalism to authorized tribes has worked well not only to provide resources to build tribal programs (*e.g.*, to receive section 106 CWA grants that support tribal monitoring of water quality), but also to provide the opportunity for tribes to start taking active management responsibility for environmental resources (*e.g.*, establishing CWA WQS for reservation waters). Such activities are major steps in carrying out the EPA Indian Policy, under which the Agency recognizes tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with agency standards and regulations. EPA has already approved 70 tribal programs that include regulatory authorities, and several more have active applications at or near the approval stage (see above). Some tribes may raise concerns that few if any new final TAS approvals have occurred in 2017 and may ask if additional TAS process steps are being put in place.

EPA's Response: The Agency has a strong record of supporting tribes, beginning with the EPA Indian Policy of 1984. We are particularly proud that tribes have taken on responsibility for 70 tribal regulatory programs nationwide, including the 54 tribal water quality standards programs that are helping to bring Clean Water Act protections to reservation waters. As you probably know, EPA Regional Offices carefully review tribes' eligibility documentation before approving TAS applications. Here at Headquarters, my team is coming up to speed on this process and will continue our work with the Regional Offices and tribes on the review of these applications.

Operation and Maintenance (O+M) of Tribal Drinking Water and Wastewater Utilities

Who may bring up the issue: Any of the tribal representatives present at the meeting.

Background: The EPA lacks authority to conduct or fund Operation and Maintenance (O+M) activities for tribal drinking water and wastewater utilities. The EPA supports capacity development of utilities through the provision of training, technical assistance, and operator certification through its Tribal Public Water System Supervision, Drinking Water Infrastructure Grants – Tribal Set-Aside, and Clean Water Indian Set-Aside programs. In partnership with the IHS and USDA's, and their project to assess O+M costs of Tribal utilities, the EPA is developing a series of O+M case studies highlighting technical, managerial, and financial capacities found in nine of these tribal utility organizations.

EPA's Response: While the EPA lacks authority to conduct or fund O+M activities, we support these activities through the provision of training, technical assistance, and operator certification for tribal utility personnel.

Tribal Drinking Water Access Measure - National Program Measure SDW-18.N11

Who may bring up the issue: Any of the tribal representatives present at the meeting.

Background: The National Program Measure SDW-18.N11, tracked the number of American Indian and Alaska Native homes provided access to safe drinking water in coordination with other federal agencies. EPA relied upon IHS data to calculate the measure. Changes to IHS data systems (Home Inventory

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Tracking System implementation) impeded the EPA calculation methods. The drinking water access measure was removed and uncalculated for FY15.

EPA's Response: EPA worked closely with the IHS to assess data sources and develop a proposed measure. This proposed measure is under review of agency leadership to ensure it meets the needs of both tribes and the Agency.

Funding for Tribal Drinking Water & Wastewater Infrastructure Summary

Who may bring up the issue: Any of the tribal representatives present at the meeting.

Background: There are three funding programs to support tribal water and wastewater infrastructure:

- **Drinking Water Infrastructure Grant Tribal Set Aside (DWIG-TSA) Program:** Section 1452 of the Safe Drinking Water Act authorizes the EPA to award capitalization grants to states to establish a Drinking Water State Revolving Loan Fund. For the first time in 2016 a new funding floor applied that stated either 2% or \$20 million, whichever is greater, would be distributed through the DWIG-TSA program.
 - FY17 Funding level was \$20M (new funding floor since FY16).
- **Clean Water Indian Set Aside (CWISA) Program:** EPA Regions work closely with the Indian Health Service to prioritize Clean Water State Revolving Fund program funds. Over time, Congress has increased the tribal set aside percentage from 0.5 to 2%. For the first time in 2016 a new funding floor applied that stated either 2% or \$30 million, whichever is greater, would be distributed through the CWISA program.
 - FY17 Funding level was \$30M (new funding floor since FY16).
- **Rural and Alaskan Native Villages (ANV) Grant Program:** Section 113(a) of the Clean Water Act and the EPA's annual appropriation acts allows EPA to distribute funds for capital improvements to construct drinking water and wastewater treatment infrastructure for Alaskan rural and ANV communities. Funds may also be used for training, technical assistance and educational programs to address water infrastructure needs in rural Alaska.
 - FY17 Funding level was \$19,653 (about twice the FY15 funding level of \$10M).

EPA's Response: The EPA continues to support and address the need for safe drinking water and wastewater infrastructure in Indian country and Alaskan Native Villages.

Region 4

Miccosukee Tribe Water Quality

Background: The Tribe has historically met with former Regional Administrators and Deputy Administrators several times over the years and requested EPA work with the State to address sources of phosphorus pollution entering the Tribe's reservation from the western basins. Under the Consolidated Appropriations Act of 2016, the Interior, Environment, and Related Agencies House Appropriations Sub-Committee directed the National Park Service to work with EPA and other federal agencies to develop options to address the water quality issues of the L-28 canal system which feeds into the Miccosukee Reservation. Phosphorus pollution is causing negative ecological impacts that reduce the Miccosukee Tribe's access to and use of its federal reservation. A draft report containing a suite of technical and policy options is under review in the Department of Interior.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

EPA's Response: EPA is making it a priority to work with the Tribe and other Federal and state agencies to address the Tribe's concerns. EPA staff actively participate on multiple teams for the Army Corps and State of Florida sponsored Western Everglades Restoration Project (WERP) that is currently in the planning phase. WERP has several goals that will improve the quantity, quality, timing and distribution of water in the western Everglades including ensuring that inflows to the Miccosukee Reservation meet applicable water quality standards.

Seminole Tribe of FL Water Quantity and Water Quality Concerns

Background: The Seminole Tribe has expressed strong concerns during meetings of the South Florida Everglades Task Force about lack of sufficient quantities of water to ecologically support the Tribe's natural resources. (EPA's member of the Task Force is currently vacant.) The Army Corps of Engineers has initiated the plan formulation process for the Western Everglades Restoration Plan, with objectives that include addressing the Seminole Tribe's concerns.

EPA's Response: EPA is making it a priority to work with the Tribe and other Federal and state agencies to address the Tribe's concerns. EPA staff actively participate on multiple teams for the Army Corps and State of Florida sponsored Western Everglades Restoration Project (WERP) that is currently in the planning phase. WERP has several goals that will improve the quantity, quality, timing and distribution of water in the western Everglades including re-establishing sheetflow across the Big Cypress Seminole Indian Reservation and into Big Cypress National Preserve.

Region 8

UIC Issue, Proposed Powertech (USA) Inc. Dewey Burdock Uranium In-Situ Recovery Site

Who May Bring Up the Issue: Oglala Sioux (South Dakota) and other tribes

Background: The Nuclear Regulatory Commission (NRC) and the South Dakota Department of Environment and Natural Resources (DENR) are the lead agencies for the Powertech proposed uranium in-situ recovery (ISR) project site northwest of Edgemont, South Dakota. The NRC license and the DENR large scale mining permit will regulate the whole site including operation, aquifer restoration and site closure.

The EPA's role is to issue permits for injection wells at the site and make a determination on an associated aquifer exemption request. The UIC Class III permit decision will be the first EPA-issued UIC permit for ISR uranium recovery, nationwide. Powertech has proposed fourteen well fields each containing several hundred Class III injection wells (400 to 700 feet deep), and up to eight deep injection wells for the disposal of operation waste fluids at this site. Powertech also submitted an aquifer exemption request to enable injection for uranium recovery from ore deposits within the Inyan Kara Group aquifer system.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

At least 38 tribal nations have historic claims to the proposed project area near the Black Hills and/or considered this area to be sacred. Through consultation with a number of tribal nations to date, EPA has heard tribes raise a number of issues including concerns about potential impacts on historic properties, including those of traditional religious and cultural importance. The EPA anticipates issuing its draft UIC permit decisions in the fall of 2016. There will be a 60 day public comment period and public hearings will be held at a number of locations near the site.

EPA's Response: The EPA will be able to provide interested tribes much more specific information about how its UIC permits propose to protect underground sources of drinking water at the site once the Agency issues its draft UIC decisions. All tribes will be given advanced notice of EPA's public comment period and the date, time, and locations of the public hearings. The EPA encourages all interested tribes to consult with EPA throughout its permitting process and is committed to considering all tribal input to inform its permit and aquifer exemption decisions.

White Mesa Mill, Utah

Who may bring up the issue: Ute Mountain Ute Tribe

Background: The White Mesa Mill, a uranium processing mill located in southeastern Utah and adjacent to the Ute Mountain Ute Tribe's ("Tribe") White Mesa community, is operated by Energy Fuels Resources (USA) Inc. ("EFR"). EFR receives and processes natural uranium-bearing ores including certain specified alternate feed materials, and also possesses byproduct material in the form of uranium waste tailings and other uranium byproduct wastes generated by the licensee's milling operations.

The mill is subject to the National Emission Standards for Radon Emissions from Operating Mill Tailings promulgated as a National Emission Standard for Hazardous Air Pollutants under the federal Clean Air Act and published in 40 C.F.R. Part 61, subpart W ("Subpart W NESHAP").

Tribal concerns: The Tribe is concerned about the future impacts to the drinking water aquifer and UDEQ/EPA's lack of action on Subpart W NESHAP. The Tribe believes the mill is in non-compliance with Subpart W NESHAP which in turn puts the mill in noncompliance with the CERCLA Off-site Rule.

EPA's response: EPA is continually evaluating whether the mill is in compliance with applicable permit and regulations, specifically the Subpart W regulations and the significance of any potential violations and will continue to engage with tribes on these issues.

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Status of 40 CFR Part 192 Proposed Rule Addressing In-situ Uranium Recovery

Who's likely to bring up the Issue: Ute Mountain Ute, who requested that the scope of the rule be changed to address issues related to the White Mesa Mill. EPA offered to consult on other aspects of uranium mining beyond the scope of the rule once the existing proposed rule was finalized.

Background: Uranium In-situ Recovery Operations

- In-situ recovery (ISR) operations use a chemical solution to alter groundwater chemistry and increase mobile concentrations of radionuclides and heavy metals in the groundwater with the intent of recovering uranium.
- Current status of industry
 - Majority of facilities located in Texas, Wyoming, Nebraska, South Dakota.
 - Low price for uranium, many facilities are on standby or minimally operating.

Proposed Rule

- **History:** In 2006, after years of implementing standards for ISL facilities, NRC said that the “manner of regulation is both complex and unmanageable” and has led to “inconsistent and ineffective regulatory program.” In 2007, NRC initiated development of rules to address the issues. The Uranium Mill Tailings Radiation Control Act (UMTRCA) gives EPA authority to promulgate standards of general application, and gives NRC with the authority to implement and enforce EPA’s standards through its licensing process. EPA began to develop the proposed standards in 2010.¹
- **January 2017 Proposal:** The EPA initially proposed new health and environmental protection standards for uranium in-situ recovery (ISR) facilities on January 26, 2015; however, the EPA decided to re-propose the rule and seek additional public comment on changes to the original proposal, including changes in the regulatory framework and approach, based on public comment and new information.
 - During the initial public comment period in 2016, the Agency received over 5,380 public comment letters from a wide range of stakeholders, with comments covering more than 80 different topics.
 - In addition, during interagency review, there were approximately 20 meetings where groups of stakeholders expressed concerns to OMB on the original proposal.

EPA's Response: On August 2, 2017, EPA extended the comment period to October 16, 2017, on the January 19, 2017 re-proposal.

Region 9

Anaconda Copper Mine Site (Yerington, NV)

Who may bring up the issues: Yerington Paiute Tribe, Walker River Paiute Tribe

INTERNAL AGENCY DRAFT – EPA BRIEFING MATERIALS

Background: The Anaconda Copper Mine Site in Yerington, NV, was proposed for NPL listing in September 2016. In July 2017, Atlantic Richfield offered to pay for site cleanup if EPA defers NPL listing. On July 31, 2017, The State of Nevada officially requested that EPA defer the final NPL listing for the site. There are two tribes potentially impacted by the site, the Yerington Paiute Tribe and the Walker River Paiute Tribe. Both Tribes continue to support final NPL listing and have raised significant concerns about the proposed deferral option. Under a deferral option, EPA would not defer remedy decisions and EPA would retain lead agency status for work on tribal lands.

EPA's Response: EPA has been coordinating with both tribes regarding the proposed deferral option since Nevada first raised the issue to EPA in February 2017. Over the past 7 months, EPA participated with the tribes in two roundtable meetings hosted by the State in Yerington, NV, and a third hosted by the Yerington Paiute Tribe on their reservation. Recently, EPA held formal consultation meetings with each tribal council at each of the reservations. In addition, EPA's monthly project management calls with the tribes' environmental department staff have kept the tribes updated and facilitated ongoing communication.

National Tribal Caucus: Environmental Protection for Indian Country

FY 2019 Budget Priority Guidance

In response to EPA's request for guidance from the NTC for Fiscal Year 2019 budget discussions, the NTC respectfully emphasizes the importance of upholding the federal government's trust responsibility to tribal nations to protect tribal communities and the environment on tribal lands.

As an essential priority, the NTC respectfully urges EPA to ***preserve current funding levels for all core tribal environmental programs in fulfillment of the federal trust responsibility***. The proposed 30 percent budget cut will leave many programs with insufficient staff and resources to operate effectively.

Top FY 2019 Budget Priorities

- Maintain funding for state, local, and tribal air quality programs.
- Sustain tribal funding under the Clean Water Act.
- Provide sufficient funding for tribes to conduct toxics monitoring, risk assessments, and biomonitoring studies on toxics and tribal communities.
- Preserve funds for tribal pesticide programs and support tribal efforts on integrated pest management in public housing, pesticide risk assessments, and pollinator protection.
- Support sustainable and ongoing tribal waste operations and pollution prevention solutions.
- Restore funding to the Exchange Network (EN) and determine how to support operation and maintenance costs under EN grants.

Collaboration and Leveraging Resources

- Recommit to engagement with interagency efforts, including the Interagency Task Force.
- Streamline internal EPA processes and enhance education and communication among departments.
- Promote state-tribal collaboration on tribal environmental programs.

Working Effectively with Tribes

- Safeguard from cuts or elimination all tribal environmental programs.
- Uphold the principles of EPA's 1984 Indian Policy.
- Engage in tribal consultation prior to any action that affects tribes.
- Suspend implementation of the GAP guidance and guidebook until a working group of EPA and tribal representatives can convene to develop more effective guidance provisions.

Restoring Grants

- Sustain tribal grants under sections 106 and 319 of the Clean Water Act.
- Reinstate the Superfund tax.
- Fully fund existing tribal pesticide program cooperative agreements and expand tribal pesticide program coverage.
- Restore funding for the Exchange Network program to FY 2017 levels or higher.



U.S. Environmental Protection Agency | National Tribal Operations Committee

National Tribal Caucus

Budget Priority Guidance | Fiscal Year 2019



National Tribal Caucus: Environmental Protection for Indian Country

Table of Contents

Executive Summary.....	3
Top FY 2019 Budget Priorities.....	3
Collaboration and Leveraging Resources.....	3
Working Effectively with Tribes.....	3
Restoring Grants.....	3
Introduction.....	4
Essential Budget Priority.....	5
FY19 Budget Priorities.....	5
Improving Air Quality.....	5
Protecting Water.....	5
Taking Action on Toxics and Chemical Safety.....	5
Toxics.....	6
Pesticides.....	6
Cleaning Up Communities.....	6
Enhancing the Exchange Network.....	7
Collaboration and Leveraging Resources.....	7
Strengthening Partnerships with Tribes.....	8
Restoring Grants.....	10
Conclusion.....	10
NTC Officers and Members.....	11

National Tribal Caucus: Environmental Protection for Indian Country

Executive Summary

In response to EPA's request for guidance from the NTC for Fiscal Year 2019 budget discussions, the NTC respectfully emphasizes the importance of upholding the federal government's trust responsibility to tribal nations to protect tribal communities and the environment on tribal lands.

As an essential priority, the NTC respectfully urges EPA to ***preserve current funding levels for all core tribal environmental programs in fulfillment of the federal trust responsibility***. The proposed 30 percent budget cut will leave many programs with insufficient staff and resources to operate effectively.

Top FY 2019 Budget Priorities

- Maintain funding for state, local, and tribal air quality programs.
- Sustain tribal funding under the Clean Water Act.
- Provide sufficient funding for tribes to conduct toxics monitoring, risk assessments, and biomonitoring studies on toxics and tribal communities.
- Preserve funds for tribal pesticide programs and support tribal efforts on integrated pest management in public housing, pesticide risk assessments, and pollinator protection.
- Support sustainable and ongoing tribal waste operations and pollution prevention solutions.
- Restore funding to the Exchange Network (EN) and determine how to support operation and maintenance costs under EN grants.

Collaboration and Leveraging Resources

- Recommit to engagement with interagency efforts, including the Interagency Task Force.
- Streamline internal EPA processes and enhance education and communication among departments.
- Promote state-tribal collaboration on tribal environmental programs.

Working Effectively with Tribes

- Safeguard from cuts or elimination all tribal environmental programs.
- Uphold the principles of EPA's 1984 Indian Policy.
- Engage in tribal consultation prior to any action that affects tribes.
- Suspend implementation of the GAP guidance and guidebook until a working group of EPA and tribal representatives can convene to develop more effective guidance provisions.

Restoring Grants

- Sustain tribal grants under Sections 106 and 319 of the Clean Water Act.
- Reinstate the Superfund tax.
- Fully fund existing tribal pesticide program cooperative agreements and expand tribal pesticide program coverage.
- Restore funding for the Exchange Network program to FY 2017 levels or higher.

National Tribal Caucus: Environmental Protection for Indian Country

Introduction

The National Tribal Caucus (NTC) is a national body of tribal advisors who work to identify and address urgent or emerging tribal environmental issues across Indian country. The NTC's mission is to ensure sovereign tribal nations can protect human health, traditional lifeways, and the environment. This document was developed to guide EPA budget priority discussions for Fiscal Year 2019 (FY 19).

The NTC stresses to EPA the importance of upholding the federal government's trust responsibility to tribal nations. Honoring the government-to-government relationship between EPA and tribes is paramount to protecting the communities and environment on tribal lands. Consultation with tribal nations accomplishes meaningful engagement and captures responses to EPA actions that may affect tribal interests.

To identify tribal priorities for the FY 2019 EPA budget, EPA posed the following questions to the NTC to guide the FY 19 budget discussion.

1. Looking across all of the Agency's work, what are your 3 or 4 top priorities for EPA's FY 2019 budget?
2. Are there particular areas where we could do a better job of leveraging our resources with other federal agencies to support tribal capacity building and direct implementation? What about leveraging among the tribes?
3. Do you see any areas where we could work smarter—more efficiently or more effectively—with tribes to make our limited dollars go further?
4. If we could restore, partially or fully, some of your grants, what would be your top 3 to 5 priorities?

The NTC sought input from regional operation committees and tribal programs, and worked with the tribal partnership groups to develop the responses to these budget priority questions. The NTC respectfully requests that EPA commit to fully considering these recommendations in its budget decisions for FY 2019.

National Tribal Caucus: Environmental Protection for Indian Country

Essential Budget Priority

The most essential FY 19 budget priority is to preserve current funding levels for all core tribal environmental programs. Tribal programs currently operate at underfunded levels, and a 30 percent budget cut will leave many federal programs with inadequate staff to uphold federal regulations locally, regionally, and nationally. Insufficient resources to sustain these programs will have a devastating impact on basic human and environmental health within tribal communities. The NTC urges EPA to hold tribal environmental program budgets harmless. Through treaty negotiations, tribes prepaid the United States with lands and resources in exchange for federal trust responsibilities. To honor this trust responsibility, it is appropriate that EPA maintain tribal environmental programs.

FY19 Budget Priorities

Q1: Looking across all of the Agency's work, what are your 3 or 4 top priorities for EPA's FY 2019 budget?

In response to this question, the NTC has identified several priority areas for tribal environmental programs, including air quality, water quality, chemical safety, community cleanup and waste management, and enhancement of the Exchange Network (EN). Specific recommendations for each area are included in the following sections.

Improving Air Quality

Air pollution often impacts tribes more severely than other U.S. populations. However, tribal air quality programs are minimally funded, compared with the magnitude of air quality issues affecting Indian country. The NTC makes the following request related to air quality programs.

- **Maintain funding for state, local, and tribal air quality programs at a level that ensures they can continue to operate fully.** Engage in tribal consultation regarding air quality programs to understand their needs, and be responsive to requests from tribal programs.

Protecting Water

Clean water is integral to indigenous lifeways and tribal resources. However, funding for water quality improvement under Section 106 of the Clean Water Act has decreased. To protect this valuable natural resource, the NTC requests the following.

- **Sustain tribal grants under Sections 106 and 319 of the Clean Water Act** to support tribes in establishing water pollution control programs.

Taking Action on Toxics and Chemical Safety

Tribes need support in managing toxics and pesticides to ensure chemical safety. Specific FY 2019 requests related to toxics and pesticides are as follows.

National Tribal Caucus: Environmental Protection for Indian Country

Toxics

Mitigating toxics that have degraded tribal ecosystems is important to protecting traditional food sources, medicines, cultural practices, and indigenous lifeways. To address the threat of toxics to tribal communities, the NTC requests the following from EPA.

- **Provide sufficient funding for tribes to conduct toxics monitoring, risk assessments, and biomonitoring studies on toxics and tribal communities.** These activities will provide data on exposure risks to tribal communities to inform EPA's rulemaking on addressing risks from certain persistent, bioaccumulative toxic chemicals, as required under the Toxics Substance Control Act. Coordinate with public health agencies and associations to work with tribes on biomonitoring and risk assessments.

Pesticides

For many tribal communities, tribal agricultural programs are significant economic drivers. Pesticide regulatory programs are critical to ensuring the food produced through agricultural programs meets consumer and distributor safety expectations. These programs protect community health, cultural resources, and the health of agricultural workers. Current tribal pesticide cooperative agreements only cover about 90 tribes. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the federal government to provide pesticide program coverage for tribes, and EPA has direct implementation authority for tribes not covered by these agreements. However, EPA lacks the capacity to manage and monitor pesticide activities throughout all of Indian country.

- **Refrain from budget cuts to tribal pesticide programs.** Reductions to this funding will leave many tribal programs unable to sustain operations.
- **Promote the protection of tribal health and cultural resources** by supporting tribal efforts related to:
 - integrated pest management in public housing;
 - improved pesticide risk assessment; and
 - the development of pollinator protection plans.

Cleaning Up Communities

Indian country faces solid waste challenges caused by unauthorized dumping of solid waste on tribal lands. To support tribes in cleaning up tribal communities and effectively managing waste, the NTC recommends the following to EPA.

- **Maintain sustainable and ongoing tribal solid waste operations.**
- **Prioritize pollution prevention solutions for tribes** by providing multi-year grant resources that waive matching fund requirements and fund waste reduction and disposal through integrated solid waste management programs.
- **Identify the steps necessary to enter into a memorandum of agreement between tribes and EPA that gives tribes primacy under the Brownfields Comprehensive Environmental Response, Compensation, and Liability Act Section 128 (a).** Permit the use of these funds for assessments and cleanup of contamination on tribal lands.

National Tribal Caucus: Environmental Protection for Indian Country

- **Develop inspector and compliance assistance training curricula** to improve the efficiency of inspections and enable tribal staff to secure federal credentials. Continue efforts to broaden training opportunities and outreach.
- **Provide financial support to tribes that conduct cultural resource monitoring on reservations and in usual or accustomed areas.**

Enhancing the Exchange Network

The Exchange Network (EN) is a forum where EPA and its partners can share environmental data to collaborate and inform decisions. Each year, EPA awards assistance agreements to tribes and other partners to develop the EN. To enhance this information-sharing tool, the NTC recommends the following.

- **Restore funding to the EN grant program to FY 2017 levels or higher.** Maintain the 10 percent tribal allocation under the grant program. Funding for the program was cut by 30 percent in FY 2018 and cannot sustain further cuts without detriment to the services it provides.
- **Evaluate tribal funding to determine how to support ongoing operation and maintenance costs,** which are currently not covered by EN grants.
- **Maintain or increase current funding levels for the cooperative agreement** through EPA's Office of Environmental Information to an organization that can support the Tribal Governance Group (TGG). Find ways to expand the scope of the agreement so it offers the same level of support to tribes that states receive through the cooperative agreement with the Environmental Council of the States. Expand funding to allow for full-time support staff, additional training and technical assistance for tribes, and development of technical solutions to support and sustain tribal EN activities.
- **Support stakeholders' information technology capacity** by supporting infrastructure needs and developing recommendations for achieving full partnership in EN, E-Enterprise, and other regulatory initiatives.
- **Support a full-time EN tribal coordinator or liaison** who can support the TGG and tribes and engage in EN governance.

Collaboration and Leveraging Resources

Q2: Are there particular areas where we could do a better job of leveraging our resources with other federal agencies to support tribal capacity building and direct implementation? What about leveraging among the tribes?

The NTC has identified several areas where collaboration would support tribal environmental efforts, including partnership with other federal agencies, synthesized communication among EPA departments, and promotion of tribal-state environmental partnerships.

The NTC recommends that EPA recommit to meaningful engagement with interagency efforts, including the Interagency Task Force. Further, EPA should identify ways to work more closely with other federal agencies on programs and initiatives that provide resources to tribes for addressing

National Tribal Caucus: Environmental Protection for Indian Country

their environmental management efforts. EPA can collaborate with tribal liaisons from other federal agencies to identify training opportunities and technical capacity development efforts that intersect with EPA's mission.

Within EPA, streamlining processes and improving internal education and communication to more effectively and efficiently support tribal programs should be a high priority. The NTC recommends that EPA ensure data resources are integrated and compatible across EPA databases. EPA should also continue to support peer mentoring activities and expand funding for peer mentoring to all cross-media environmental programs.

Tribal collaboration with state regulatory partners, including sharing of training resources and enforcement information and, in some cases, joint enforcement actions, have successfully supported tribal environmental program needs. Based on positive feedback from states, tribes, and EPA regarding the success of these relationships, EPA should continue to advocate for these efforts.

Strengthening Partnerships with Tribes

Q3: Do you see any areas where we could work smarter—more efficiently or more effectively—with tribes to make our limited dollars go further?

The federal government owes a duty of trust to all federally recognized tribes and holds a unique government-to-government relationship with tribal governments. The federal trust responsibility is mandated by numerous regulations, policies, statutes, and court rulings. To honor the government-to-government relationship with tribal nations, EPA must consult with tribal governments and coordinate with them as co-regulators.

The NTC commends EPA's affirmation of this trust responsibility in its 1984 Indian Policy, which contains a series of principles to implement "the keynote of [the Agency's efforts to protect human health and the environment in Indian country, which is] to give special consideration to tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands." The principles of the Indian Policy reiterate the importance of the government-to-government relationship between EPA and tribes, which is separate from EPA's relationship with states or other political subdivisions; recognize tribal governments as the primary parties for setting standards, making environmental policy decisions, and managing programs for reservations; and instruct that these policies be incorporated into EPA programmatic planning and budget processes.

The NTC respectfully urges EPA to uphold the principles of the Indian Policy. Consistent with the trust relationship affirmed by the policy, the NTC requests the following from EPA.

- Safeguard from cuts or elimination all tribal funding programs that existed and were funded by Congress in FY 2017 and FY 2018.** Consistent with the federal trust responsibility, EPA plays a critical role in efforts to protect human health and the environment in Indian country through federally delegated programs or tribally defined efforts.

National Tribal Caucus: Environmental Protection for Indian Country

- **Engage in tribal consultation prior to any action that affects tribes.** The Indian Policy underscores the importance of honoring the government-to-government relationship through meaningful tribal consultation. EPA's 2011 Policy on Consultation and Coordination with Indian Tribes further elaborates on the importance of this relationship by defining a formal consultation process to be undertaken whenever an EPA action has the potential to impact tribal interests. Over the last several months, EPA has taken actions that have the potential to significantly impact tribal interests. These include:
 - proposed deep cuts to or total elimination of funding programs upon which many tribes rely;
 - proposed repeal or revisions of regulations that protect tribal environments;
 - reorganization proposals, including staff reductions, that appear to significantly weaken EPA's ability to engage in the work needed to protect human health and the environment in Indian country; and
 - updated program guidance documents that minimize EPA's relationship with tribes and frame the acknowledgement of tribal environmental issues and needs as an afterthought.

Many of these actions have been taken within short timeframes and without tribal consultation, which violates EPA's policies. The NTC requests that EPA implement a meaningful consultation process for each proposed action currently in consideration, including the above-mentioned funding cuts and program elimination; the repeal or revision of any regulations or guidance, planning, or policy documents; and any proposed agency reorganization.

- **Recommit to meaningful engagement with interagency efforts.** Interagency efforts, such as the Infrastructure Task Force, are crucial to successfully addressing ongoing needs in Indian country related to drinking water and wastewater infrastructure, system operation and maintenance, and waste management.
- **Suspend the implementation of the GAP guidance and guidebook until a working group of EPA and tribal representatives can convene to develop more effective guidance provisions.** The new GAP guidance and the issuance of an EPA-wide plan for tribal solid waste management have imposed significant administrative burdens on tribes. These actions have also limited available assistance and the flexibility to direct resources to top tribal priorities. However, this guidance has remained in place despite tribal objections. A working group that includes tribal representation will help develop guidance provisions that better serve tribal needs and interests while addressing the concerns of EPA's Office of Inspector General.

National Tribal Caucus: Environmental Protection for Indian Country

Restoring Grants

Q4: If we could restore, partially or fully, some of your grants, what would be your top 3 to 5 priorities?

With respect, the NTC would like to emphasize that preserving funds for all tribal environmental programs is crucial to the health of tribal communities across Indian country. In response to this question, the NTC has outlined several funding priorities.

GAP funding should be the highest priority for full funding, since many tribes are still building basic environmental program capacity. GAP funding is critical for tribes to establish the core infrastructure needed for the development of tribal environmental programs and to meaningfully consult with EPA on regulatory actions that affect tribal health and cultural resources. Because the GAP program is pivotal to tribal environmental programming, the NTC also requests that EPA consult with tribes before updating GAP performance measures and guidance.

In addition to sustaining GAP funding, the NTC requests that EPA preserve or restore the following funding sources.

- Sustain funding for Sections 106 and 319 of the Clean Water Act.
- Reinstatement of the Superfund tax, under which the entities responsible for contamination should shoulder the financial burden that has otherwise been placed on tribes.
- Restore funding for the EN grant program to FY 2017 levels or higher. Maintain the 10 percent tribal allocation under the grant program.
- Fully fund existing tribal pesticide program cooperative agreements and seek to expand tribal pesticide program coverage throughout Indian country.

Conclusion

The NTC looks forward to working with EPA and collaborating to achieve a FY 19 budget that preserves the integrity of tribal environmental programs to fulfill their role of protecting human health and the environment.

National Tribal Caucus: Environmental Protection for Indian Country

NTC Officers and Members

Chair

Evaristo Cruz, R6
Ysleta del Sur Pueblo of Texas

Vice Chair

Paula Britton, R9
Cahto Tribe

Secretary

Gerald Wagner, R8
Blackfeet Tribe

Sharri Venno, R1

Houlton Band of Maliseet Indians

Scott Clow, R8

Ute Mountain Tribe

Shavonne F. Smith, R2

Shinnecock Indian Nation

Mark Allen, R8

Flandreau Santee Sioux Tribe

Darin Steen, R4

Catawba Indian Nation

Alex Cabillo, R9

Hualapai Tribe

Rob Hull, R5

Grand Portage Tribal Council

Clifford Banuelos, R9

Elko Band Council

Douglas Cox, R5

Menominee Indian Tribe of Wisconsin

Willie Frank, III, R10

Nisqually Tribe

Sara Hill, R6

Cherokee Nation

Lee Juan Tyler, R10

Shoshone Bannock Tribes

Julia Sage, R7

Ponca Tribe of Nebraska

Billy Maines, R10

Curyung Tribe

Thomas Robinson, R10

Qawalangin Tribe of Unalaska

11/8/84

EPA POLICY FOR THE ADMINISTRATION OF ENVIRONMENTAL PROGRAMS ON INDIAN RESERVATIONS

INTRODUCTION

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-government" relations between Federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

POLICY

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE “GOVERNMENT-TO-GOVERNMENT” RELATIONSHIP). RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA’s deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA’s authority and resources, this aid will include providing grants and other assistance to Tribes similar to that we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State Governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATIONS TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.

8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with Federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgement, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

In those cases where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as the Agency would to noncompliance by the private sector elsewhere in the country. Where the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, EPA will respond as described in the first paragraph above.

9. THE AGENCY WILL INCORPORATE THESE INDIAN POLICY GOALS INTO ITS PLANNING AND MANAGEMENT ACTIVITIES, INCLUDING ITS BUDGET, OPERATING GUIDANCE, LEGISLATIVE INITIATIVES, MANAGEMENT ACCOUNTABILITY SYSTEM AND ONGOING POLICY AND REGULATION DEVELOPMENT PROCESSES.

It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.

William D. Ruckelshaus